



UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
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# 10

In re Application of :  
Peter Watts :  
Serial No.: 09/749,152 : PETITION DECISION  
Filed: December 27, 2000 :  
Attorney Docket No.: WC110CON :

This is a decision on the petition under 37 CFR 1.181, filed May 7, 2002 (Certificate of Mailing dated April 26, 2002), to Withdraw the Finality of the last Office action. The petition is untimely as it was filed more than two months after the action complained of, however it will be treated on the merits.

A review of the file history shows that the examiner mailed a first Office action to applicant on July 17, 2001, setting forth rejections under 35 U.S.C. 112, first and second paragraphs, a rejection for Obvious Double patenting, a rejection under 35 U.S.C. 102(e) as anticipated by Kelm et al and an alternative rejection under 35 U.S.C. 103(a) as obvious over Kelm et al. Applicant replied to the Office action on October 16, 2001, addressing each rejection. The examiner mailed a new, Final Office action to applicant on January 4, 2002, the rejection for Obvious Double Patenting is repeated, the rejection under 35 U.S.C. 102(e) over Kelm is repeated and the rejection under 35 U.S.C. 103(a) is repeated, essentially verbatim from the previous Office action. In the "response to Arguments" portion of the Office action the examiner states that the rejection under 35 U.S.C. 102(e) is withdrawn, but maintains the 35 U.S.C. 103(a) rejection over Kelm, now in view of Mandel. Applicants reply to the first Office action amended two claims in such a manner as to overcome the rejections under 35 U.S.C. 112. The scope of the claims remained essentially unaltered. In view of the examiner's use of an additional reference not necessitated by applicant's amendments (and such is not propounded by the examiner) the finality of the last Office action was improper.

Applicants' petition under 37 CFR 1.181 is **GRANTED**.

**The Office action mailed January 4, 2002, is redesignated as a NON-FINAL Office action. Applicants remain under obligation to reply to the Office action within the time period set therein, or as extended under 37 CFR 1.136(a).**

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, Washington, D.C. 20231, or by telephone at (703)308-3824 or by facsimile transmission at (703) 305-7230.

John Doll

Director, Technology Center 1600

A handwritten signature in black ink, appearing to read "John Doll", is positioned above the printed name and title.